



USAID
FROM THE AMERICAN PEOPLE

Carey S. Busen, Esq.
Partner
Baker & Hostetler LLP
1050 Connecticut Avenue, NW
Suite 1100
Washington, DC 20036-5403

AUG 16 2018

Re: FOIA Request No. F-00300-17
Second Interim Response

Dear Ms. Busen:

Enclosed with this letter is the United States Agency for International Development's (USAID) production of responsive documents to your client, Campaign for Accountability's, Freedom of Information Act (FOIA) request.

On September 27, 2017, Campaign for Accountability requested copies of:

1. **All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of USAID from, sent by representatives of USAID to, or exchanged between representatives of USAID and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or the Center for Family and Human Rights ("C-Fam") regarding the January 23 Presidential memorandum re-instating the Mexico City Policy, or the Department of State's May 15 "Protecting Life in Global health Assistance" plan implementing the policy.**
2. **All calendar entries reflecting meetings between representatives of USAID and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or C-Fam regarding the January 23 Presidential memorandum re-instating the Mexico City Policy, or the Department of State's May 15 "Protecting Life in Global health Assistance" plan implementing the policy.**
3. **All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of USAID from, sent by representatives of USAID to, or exchanged between representatives of USAID and representatives of the Department of State, the Department of Health and Human Services, and/or the Trump White House regarding the January 23 Presidential memorandum re-instating the Mexico City Policy, or the Department of State's May 15 "Protecting Life in Global health Assistance" plan implementing the policy.**

4. All calendar entries reflecting meetings between representatives of USAID and representatives of the Department of State, the Department of Health and Human Services, and/or the Trump White House regarding the January 23 Presidential memorandum re-instating the Mexico City Policy, or the Department of State's May 15 "Protecting Life in Global health Assistance" plan implementing the policy.

The timeframe for the request was from January 20, 2017, to the date the search was conducted.

We conducted a search of the USAID Bureau for Global Health (GH) and the Bureau for Legislative and Public Affairs (LPA) for documents responsive to your client's request. This second interim response yielded a total of 314 pages. After careful review, it has been determined that 17 pages are releasable in their entirety, one (1) page is partially releasable, and 64 pages are withheld in full pursuant to Title 5 U.S.C. § 552 (b)(5) and (b)(6). Additionally, 137 pages were determined to be outside the scope of the request.

The remaining 95 pages contained information that originated with the United States Department of State (DoS) and the Office of Management and Budget (OMB). Therefore, we have forwarded 94 pages to DoS and one (1) page to OMB for further review.

Please be advised that this is not our final response as we are still reviewing further records. There is no charge for this FOIA request.

If you have any questions about this FOIA request, please contact Assistant United States Attorney April Seabrook at April.Seabrook@usdoj.gov or at 202-252-2525.

Sincerely,



Lynn P. Winston, Chief
FOIA Public Liaison Officer
FOIA Officer/Agency Records Officer
Bureau for Management
Office of Management Services
Information and Records Division

Enclosures: Responsive Records (18 pages)

From:	Irene Koek <ikoek@usaid.gov>
To:	Rebecca Martin <rtm4@cdc.gov>
Subject:	Expanded policy materials (PLGHA)
Date:	Wed, 31 May 2017 17:17:07 -0400

hi Rebecca,

It was very nice to see you in Geneva last week; I hope the rest of your time there went well.

I promised to send you some of the materials we have been using for educating our staff and partners on the new PLGHA policy. Attached are two documents - the first is the set of talking points we have been using in our meetings with implementing partners (as I mentioned, we have been having a series of meetings with our partners to share the information and answer questions). The second is a powerpoint presentation that we have been using internally to bring our staff up to speed. I hope these are helpful - let me know if you have any questions.

On a good note p.s., we finally have clearance and the CN release on the amendment to the IAA. I just signed the letter to you this evening; the package should be scanned and sent to you for signature tomorrow. Hurray! Again apologies for this - we will fix this process for next year!!

Best,
Irene

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Irene Koek
Deputy Assistant Administrator
Bureau for Global Health
USAID
phone: 571-551-7021
email: ikoek@usaid.gov

Sender:	Irene Koek <ikoek@usaid.gov>
Recipient:	"Rebecca Martin <rtm4@cdc.gov>"

TALKING POINTS FOR GH BUREAU MEETINGS/CALLS ON "PROTECTING LIFE IN GLOBAL HEALTH ASSISTANCE"

Week of May 15, 2017

OFFICE DIRECTOR/GH LEADERSHIP

- On January 23, 2017, President Trump reinstated the Presidential Memorandum of January 22, 2001, on the "Mexico City Policy," and directed the Secretary of State, "in coordination with the Secretary of Health and Human Services, to the extent allowable by law, to implement a plan to extend the requirements of the reinstated Memorandum to global health assistance furnished by all Departments or Agencies."
- On May 9, 2017, Secretary Tillerson approved a plan under which U.S. Government Departments and Agencies will apply the requirements of the "Mexico City Policy" to grants, cooperative agreements and contracts with foreign non-governmental organizations that provide global health assistance.
- The expanded policy, known as "Protecting Life in Global Health Assistance," requires foreign NGOs to agree, as a condition of receiving global health assistance, that they do not perform or actively promote abortion as a method of family planning or provide financial support to any other foreign NGO that conducts such activities.
- Under this expanded policy, "global health assistance," as it applies to USAID encompasses all global health programs, including HIV/AIDS, maternal and child health, nutrition, infectious diseases including malaria and TB, global health security, and family planning and reproductive health.
- The policy does not apply to humanitarian assistance.
- The policy also does not apply to national or sub-national governments, public international organizations, and other multilateral entities in which sovereign nations participate.
- Health staff and agreements officers in Washington and in the field will need to work with partners to implement the policy for global health assistance through amending awards. [SAY NAME] is the [NAME OF OFFICE] point of contact for this policy and will now discuss this process in more detail.

TECHNICAL POC

- Our goal today is to broadly discuss the Protecting Life in Global Health Assistance policy, review implementation steps, and try to answer your questions.
- USAID is taking steps to reflect the policy change in its awards.
- For assistance awards, on May 15, 2017, USAID issued a new standard provision, called “Protecting Life in Global Health Assistance (May 2017),” for grants and cooperative agreements to extend the requirements of the Mexico City Policy to global health assistance. USAID will include the new provision in:
 - (a) all new grants and cooperative agreements that provide global health assistance; and
 - (b) all existing grants and cooperative agreements that provide global health assistance when such agreements are amended to add incremental funding.
- For assistance awards that already include the Mexico City Policy (March 2017) provision, agreement officers will take steps to replace that provision with the new provision at the time of the next award modification or as soon as reasonably practicable.
- The new standard provision for assistance instruments has been incorporated into ADS 303, which is available on the public USAID website.
- For contracts, USAID will take the necessary administrative steps to include a similar provision in certain types of contracts for global health assistance at a later date. USAID will lead, with the State Department, an inter-agency rule-making process to develop a clause for contracts. The policy will not apply to contracts until that process is completed.
- The policy applies to all global health awards that include funds from the Global Health Programs (GHP), Economic Support Fund (ESF), and Assistance for Europe, Eurasia, and Central Asia (AEECA) or successor accounts, including awards reported on under the Health category of the Foreign Assistance Standardized Program Structure.
- The policy does not apply to:
 - Humanitarian assistance,
 - Food for Peace,
 - Water activities reported on under program area HL.8, Water Supply and Sanitation, and
 - the American Schools and Hospitals Abroad Program.

- The policy covers the provision of funds, commodities, equipment, or other in-kind global health assistance.
- Foreign NGOs receiving USAID global health assistance indicate their agreement to abide by the policy's conditions by accepting the provision in their award.
- The standard provision further requires U.S. NGOs to obtain such an agreement from their foreign non-governmental sub-recipients of USAID global health assistance.
- The new policy applies to the global health assistance funding other agencies receive from the Department of State and USAID to implement programs such as PEPFAR and the President's Malaria Initiative (PMI).
- We will discuss implementation of this policy with the field on Thursday, May 18, during the webinar to the field.
- Also, GC held a call with RLOs on Tuesday of this week to discuss the new standard provision, and M/OAA will communicate with Agreement Officers (AOs) regarding the new provision.
- In addition, our office will convene a meeting with implementing partners to share, in broad terms, the steps that USAID is taking to implement the policy.
- We know that you likely have many implementation questions, including questions related to integrated awards, sub-awards, commodities, and compliance. We will try and answer many of these questions in this meeting, but there may be some questions that we will need to get back to you about.
- Also, we have set up an email address (PLGHAPolicy@usaid.gov) where staff can direct their questions.
- In the coming weeks, the USAID/Washington compliance team will be in touch with additional implementation guidance and compliance support related to the policy.
- As a reminder, any press inquiries about the policy must be directed to LPA.

From:	Mary McLaughlin <mamclaughlin@usaid.gov>
To:	Shawn M Pompian <pompianism@state.gov>, Nisha Prabhu <PrabhuN@state.gov>
Subject:	Fwd: AID cleared MCP/GLI documents
Date:	Mon, 17 Apr 2017 20:37:35 -0400

FYI.

Sent from my iPhone

Begin forwarded message:

From: Ryan Essman <ressman@usaid.gov>
Date: April 17, 2017 at 7:56:10 PM EDT
To: "Street, Brian J" <StreetBJ@state.gov>
Cc: Kamiar Khajavi <kkhajavi@usaid.gov>, Mary McLaughlin <mamclaughlin@usaid.gov>, Ellen Starbird <EStarbird@usaid.gov>, Monica Pons <mpons@usaid.gov>
Subject: AID cleared MCP/GLI documents

Thanks Brian,

Attached please find our edits to both the guidance and the statement.

(b)(5) - Deliberative Process Privilege

Ryan Essman
Press Office
U.S. Agency for International Development
Office: 202.216.3805
Cell: (b)(6)

Sender:	Mary McLaughlin <mamclaughlin@usaid.gov>
Recipient:	"Shawn M Pompian <pompianism@state.gov>"; " Nisha Prabhu <PrabhuN@state.gov>"

From:	Irene Koek <ikoek@usaid.gov>
To:	Rebecca Martin <rtm4@cdc.gov>, "Moser, Melanie A. (CDC/CGH/OD)" <zbv7@cdc.gov>
CC:	ggq4@cdc.gov, "Kelly Saldana (GH/HIDN)" <KSaldana@usaid.gov>, Julie Wallace <jwallace@usaid.gov>, "bsquires@usaid.gov" <bsquires@usaid.gov>, Diane Bui <dbui@usaid.gov>
Subject:	Interagency Agreements (IAA) AID-GH-T-15-00002 and A ID-GH-T-16-00002 between the United States Agency for International Development ("USAID") and the Centers for Disease Control and Prevention ("CDC")
Date:	Tue, 16 May 2017 21:32:35 -0400

Dr. Rebecca Martin

Director, Center for Global Health

U.S. Centers for Disease Control and Prevention

Dear Rebecca,

On January 23, 2017, President Trump issued a Presidential Memorandum reinstating the 2001 Presidential Memorandum on the "Mexico City Policy" and directing the Secretary of State to implement a plan to extend the Mexico City Policy to "global health assistance furnished by all departments or agencies."

As was announced on May 15, 2017, Secretary of State Tillerson has approved a policy, called "Protecting Life in Global Health Assistance," to implement the expansion of the "Mexico City Policy". This policy applies to global health assistance furnished by all U.S. Government departments or agencies, including assistance provided with USAID funding under the above-referenced IAAs. Further details are available in the attached State Department fact sheet. <https://www.state.gov/r/pa/prs/ps/2017/05/270866.htm>

Protecting Life in Global Health Assistance applies to global health assistance to, or implemented by, foreign non-governmental organizations (NGOs), including those to which a U.S. NGO makes a sub-award with such assistance funds. Global health assistance to national or local governments, public international organizations, and other multilateral entities in which sovereign nations participate, is not subject to this policy.

As of May 15, 2017, this policy applies to all grants and cooperative agreements issued by USAID, except for those entities outlined above to which it is not applicable. It

similarly applies, as of May 15, 2017 in accordance with the policy approved by Secretary Tillerson, to all applicable grants and cooperative agreements issued by other U.S. government agencies using USAID funds.

Accordingly, the attached policy provision, or one that is substantially similar (subject to any deviations being approved by USAID), must be added to any new grants or cooperative agreements issued on or after May 15, 2017 to foreign NGOs or U.S. NGOs by CDC using USAID funds received under the above-referenced IAAs. The provision also must be added to such grant or cooperative agreement awards executed before May 15, 2017, when such awards are amended to provide additional funding.

Please take the necessary steps within your agency to implement and monitor compliance with this policy as it relates to USAID-funded activities, in accordance with all the applicable provisions and dates described above.

The necessary administrative steps, consistent with the policy, will be taken to include a similar provision in certain types of contracts for global health assistance. USAID will provide additional guidance on application of the policy to applicable contracts once those steps have been completed.

Thank you for your attention to this matter.

Kind regards,

Irene

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Irene Koek
Deputy Assistant Administrator
Bureau for Global Health
USAID
phone: 571-551-7021
email: ikoek@usaid.gov

Sender:	Irene Koek < ikoek@usaid.gov >
Recipient:	"Rebecca Martin < rta4@cdc.gov >;" " Moser, Melanie A. (CDC/CGH/OD) < zbv7@cdc.gov >;" "ggq4@cdc.gov"; " Kelly Saldana (GH/HIDN) < KSaldana@usaid.gov >;" " Julie Wallace < jwallace@usaid.gov >;" " bsquires@usaid.gov < bsquires@usaid.gov >;" " Diane Bui < dbui@usaid.gov >"

PROTECTING LIFE IN GLOBAL HEALTH ASSISTANCE (MAY 2017)

APPLICABILITY: This provision is applicable to those awards using federal funding predictably for international health activities with a primary purpose or effect of benefitting a foreign country, typically funded from the GHP, ESF, AEECA, or successor accounts, as applicable, including awards reported on under the Health category of the Foreign Assistance Standardized Program Structure (except those under program area HL.8, Water Supply and Sanitation, and the American Schools and Hospitals Abroad Program). This provision applies whenever implementation of the activity involves assistance to or implemented by foreign non-governmental organizations.

(a.) Ineligibility of Foreign Non-governmental Organizations that Perform or Actively Promote Abortion as a Method of Family Planning

This provision is in two parts: I, applicable to foreign non-governmental organizations; and II, applicable to U.S. non-governmental organizations. Both part I and part II should be included in awards.

I. Grants and Cooperative Agreements with Foreign Non-governmental Organizations

- (1) The recipient agrees that it will not, during the term of this award, perform or actively promote abortion as a method of family planning in foreign countries or provide financial support to any other foreign non-governmental organization that conducts such activities. For purposes of this paragraph (a), a foreign non-governmental organization is a for-profit or not-for-profit non-governmental organization that is not organized under the laws of the United States, any State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, or any other territory or possession of the United States.
- (2) The recipient agrees that authorized representatives of USAID may, at any reasonable time, announced or unannounced, consistent with 2 CFR Part 200: (i) inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that describe the health activities of the recipient, including reports, brochures and service statistics; (ii) observe the health activities conducted by the recipient, (iii) consult with healthcare personnel of the recipient; and (iv) obtain a copy of audited financial statements or reports of the recipient, as applicable.
- (3) In the event USAID has reasonable cause to believe that the recipient may have violated its undertaking not to perform or actively promote abortion

as a method of family planning, the recipient must make available to USAID such books and records and other information as USAID may reasonably request to determine whether a violation of that undertaking has occurred, consistent with 2 CFR Part 200.

- (4) Health assistance furnished to the recipient under this award must be terminated if the recipient violates any undertaking required by this paragraph (a), and the recipient must refund to USAID any unexpended amounts furnished to the recipient under this award, plus an amount equivalent to that used by the recipient to perform or actively promote abortion as a method of family planning while receiving funding under this award. The amount to be refunded to USAID under this subparagraph (4) may not exceed the total amount of health assistance furnished under this award.
- (5) The recipient may not furnish health assistance under this award to another foreign non-governmental organization (the sub-recipient) unless:
 - (i) sub-recipient agrees, by entering into such subaward, that it does not perform or actively promote abortion as a method of family planning in foreign countries and will not provide financial support to any other foreign non-governmental organization that conducts such activities; and
 - (ii) such foreign non-governmental organization's agreement contains the same terms and conditions as described in subparagraph (6), below.
- (6) Prior to entering into an agreement to furnish health assistance to a foreign non-governmental organization under this award, the recipient must ensure that such agreement with sub-recipient includes the following terms:
 - (i) The sub-recipient will not, while receiving assistance under this award, perform or actively promote abortion as a method of family planning in foreign countries or provide financial support to other foreign non-governmental organizations that conduct such activities;
 - (ii) The recipient and authorized representatives of USAID may, at any reasonable time, announced or unannounced, consistent with 2 CFR Part 200: (A) inspect the documents and materials maintained or prepared by the sub-recipient in the usual course of its operations that describe the health activities of the sub-recipient, including reports, brochures and service statistics; (B) observe health activities conducted by the sub-recipient; (C) consult with healthcare personnel of the sub-recipient; and (D) obtain a copy of audited financial statements or reports of the sub-recipient, as applicable;
 - (iii) In the event that the recipient or USAID has reasonable cause to believe that a sub-recipient may have violated its undertaking not to

perform or actively promote abortion as a method of family planning, the recipient will review the health program of the sub-recipient to determine whether a violation of such undertaking has occurred. The sub-recipient must make available to recipient such books and records and other information as may be reasonably requested to conduct the review. USAID may review the health program of the sub-recipient under these circumstances, and sub-recipient must provide access on a timely basis to USAID to such books and records and other information upon request, consistent with 2 CFR Part 200;

- (iv) Health assistance provided to the sub-recipient under this award must be terminated if the sub-recipient violates any award terms under subparagraphs (6)(i)-(iii), above, and the sub-recipient must refund to the recipient any unexpended amounts furnished to the sub-recipient under this award, plus an amount equivalent to that used by the sub-recipient to perform or actively promote abortion as a method of family planning while receiving funding under this award, up to the total amount of health assistance furnished to the sub-recipient under this award; and
 - (v) The sub-recipient may furnish health assistance under this award to another foreign non-governmental organization only if: (A) such foreign non-governmental organization agrees, by entering into such agreement, that it will not perform or actively promote abortion as a method of family planning in foreign countries and will not provide financial support to any other foreign non-governmental organization that conducts such activities and (B) such foreign non-governmental organization's agreement contains the same terms and conditions as those provided by the sub-recipient to the recipient as described in subparagraphs (6)(i)-(iv), above.
- (7) Where the terms and conditions of the award require USAID approval of subawards, the recipient must include a description of the due diligence performed by the recipient on the sub-recipient before furnishing health assistance under this award.
 - (8) The recipient is liable to USAID for a refund for a violation by the sub-recipient of any requirement of this paragraph (a) only if: (i) the recipient knowingly furnishes health assistance under this award to a sub-recipient that performs or actively promotes abortion as a method of family planning, or (ii) the sub-recipient did not abide by its award terms required by subparagraphs (6)(i)-(iii), above, and the recipient failed to make reasonable due diligence efforts prior to furnishing health assistance to the sub-recipient, or (iii) the recipient knows or has reason to know, by virtue of the monitoring that the recipient is required to perform under the terms of this award, that a sub-recipient has violated any of the award terms

required by subparagraphs (6)(i)-(iii), above, and the recipient fails to terminate health assistance to the sub-recipient, or fails to require the sub-recipient to terminate assistance furnished under a subaward that violates any award terms required by subparagraphs (6)(i)-(iii), above.

- (9) Recipient acknowledges that USAID may make independent inquiries in the community served by the recipient or a sub-recipient under this award regarding whether it performs or actively promotes abortion as a method of family planning.
- (10) The following definitions apply for purposes of paragraph (a):
 - (i) Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother and abortions performed for fetal abnormalities, but does not include abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest.
 - (ii) “To perform abortions” means to operate a facility where abortions are provided as a method of family planning. Excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.
 - (iii) “To actively promote abortion” means for an organization to commit resources, financial or other, in a substantial or continuing effort to increase the availability or use of abortion as a method of family planning.
 - (A) This includes, but is not limited to, the following activities:
 - (I) Operating a service-delivery site that provides, as part of its regular program, counseling, including advice and information, regarding the benefits and/or availability of abortion as a method of family planning;
 - (II) Providing advice that abortion as a method of family planning is an available option or encouraging women to consider abortion (passively responding to a question regarding where a safe, legal abortion may be obtained is not considered active promotion if a woman who is already pregnant specifically asks the question, she clearly states that she has already decided to have a legal abortion, and the healthcare provider reasonably believes that the ethics of the medical profession in the

host country requires a response regarding where it may be obtained safely and legally);

(III) Lobbying a foreign government to legalize or make available abortion as a method of family planning or lobbying such a government to continue the legality of abortion as a method of family planning; and

(IV) Conducting a public information campaign in foreign countries regarding the benefits and/or availability of abortion as a method of family planning.

(B) Excluded from the definition of active promotion of abortion as a method of family planning are referrals for abortion as a result of rape or incest, or if the life of the mother would be endangered if she were to carry the fetus to term. Also excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.

(C) Action by an individual acting in the individual's capacity shall not be attributed to an organization with which the individual is associated, provided that the individual is neither on duty nor acting on the organization's premises, and the organization neither endorses nor provides financial support for the action and takes reasonable steps to ensure that the individual does not improperly represent that he or she is acting on behalf of the organization.

(iv) Furnishing health assistance to a foreign non-governmental organization includes the transfer of funds made available under this award or goods or services financed with such funds, but does not include the purchase of goods or services from an organization or the participation of an individual in the general training programs of the recipient or sub-recipient.

(v) To "control" an organization means to possess the power to direct, or cause the direction of, the management and policies of an organization.

(II) In determining whether a foreign non-governmental organization is eligible to be a recipient or sub-recipient of health assistance under this award, the action of separate non-governmental organizations shall not be imputed to the recipient or sub-recipient, unless, in the judgment of USAID, a separate non-governmental organization is being used purposefully to avoid the provisions of this paragraph (a). Separate non-

governmental organizations are those that have distinct legal existence in accordance with the laws of the countries in which they are organized. Foreign organizations that are separately organized shall not be considered separate, however, if one is controlled by the other. The recipient may request the USAID Agreement Officer's approval to treat as separate the health activities of two or more organizations, which would not be considered separate under the preceding sentence. The recipient must provide a written justification to USAID that the health activities of the organizations are sufficiently distinct to warrant not imputing the activity of one to the other.

- (12) Health assistance may be furnished under this award by a recipient or sub-recipient to a foreign government or parastatal even though the government or parastatal includes abortion in its health program, provided that no such assistance may be furnished under this award in support of the abortion activity of the government or parastatal and any funds transferred to the government or parastatal must be placed in a segregated account to ensure that such funds may not be used to support the abortion activity of the government or parastatal.
- (13) For the avoidance of doubt, in the event of a conflict between a term of this paragraph (a) and an affirmative duty of a healthcare provider required under local law to provide counseling about and referrals for abortion as a method of family planning, compliance with such law shall not trigger a violation of this paragraph (a).

II. Grants and Cooperative Agreements with U.S. Non-governmental Organizations

- (1) The recipient (A) agrees that it will not furnish health assistance under this award to any foreign non-governmental organization that performs or actively promotes abortion as a method of family planning in foreign countries; and (B) further agrees to require that such sub-recipients do not provide financial support to any other foreign non-governmental organization that conducts such activities. For purposes of this paragraph (a), a foreign non-governmental organization is a for-profit or not-for-profit non-governmental organization that is not organized under the laws of the United States, any State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, or any other territory or possession of the United States.
- (2) Prior to entering into an agreement to furnish health assistance to a foreign non-governmental organization (sub-recipient) under this award, recipient must ensure that such agreement with sub-recipient includes the following terms:
 - (i) The sub-recipient will not, while receiving assistance under this award, perform or actively promote abortion as a method of family planning in foreign countries or provide financial support to other foreign non-governmental organizations that conduct such activities;
 - (ii) The recipient, and authorized representatives of USAID may, at any reasonable time, announced or unannounced, consistent with 2 CFR Part 200: (A) inspect the documents and materials maintained or prepared by the sub-recipient in the usual course of its operations that describe the health activities of the sub-recipient, including reports, brochures and service statistics; (B) observe the health activities conducted by the sub-recipient; (C) consult with healthcare personnel of the sub-recipient; and (D) obtain a copy of audited financial statements or reports of the sub-recipient, as applicable;
 - (iii) In the event that the recipient or USAID has reasonable cause to believe that a sub-recipient may have violated its undertaking not to perform or actively promote abortion as a method of family planning, the recipient will review the health program of the sub-recipient to determine whether a violation of such undertaking has occurred. The sub-recipient must make available to recipient such books and records and other information as may be reasonably requested to conduct the review. USAID may review the health program of the sub-recipient under these circumstances, and sub-recipient must provide access on a

timely basis to USAID to such books and records and other information upon request, consistent with 2 CFR part 200;

- (iv) Health assistance provided to the sub-recipient under this award must be terminated if the sub-recipient violates any award terms required by subparagraphs (2)(i)-(iii), above, and the sub-recipient must refund to the recipient any unexpended amounts furnished to the sub-recipient under this award, plus an amount equivalent to that used by the sub-recipient to perform or actively promote abortion as a method of family planning while receiving funding under this award, up to the total amount of health assistance furnished to the sub-recipient under this award; and
 - (v) The sub-recipient may furnish health assistance under this award to another foreign non-governmental organization only if: (A) such foreign non-governmental organization agrees, by entering into such agreement, that it will not perform or actively promote abortion as a method of family planning in foreign countries and will not provide financial support to any other foreign non-governmental organization that conducts such activities; and (B) such foreign non-governmental organization's agreement contains the same terms and conditions as those provided by the sub-recipient to the recipient as described in subparagraphs (2)(i)-(iv), above.
- (3) Where the terms and conditions of the award require USAID approval of subawards, the recipient must include a description of the due diligence performed by the recipient on the sub-recipient before furnishing health assistance under this award.
 - (4) The recipient is liable to USAID for a refund for a violation by the sub-recipient of any requirement of this paragraph (a) only if: (i) the recipient knowingly furnishes health assistance under this award to a sub-recipient that performs or actively promotes abortion as a method of family planning; or (ii) the sub-recipient did not abide by its award terms required by subparagraphs (2)(i)-(iii), above, and the recipient failed to make reasonable due diligence efforts prior to furnishing health assistance to the sub-recipient; or (iii) the recipient knows or has reason to know, by virtue of the monitoring that the recipient is required to perform under the terms of this award, that a sub-recipient has violated any of the award terms required by subparagraphs (2)(i)-(iii), above, and the recipient fails to terminate health assistance to the sub-recipient, or fails to require the sub-recipient to terminate assistance furnished under a subaward that violates any award terms required by subparagraphs (2)(i)-(iii), above.
 - (5) Recipient acknowledges that USAID may make independent inquiries in the community served by a sub-recipient under this award regarding

whether such sub-recipient performs or actively promotes abortion as a method of family planning.

(6) The following definitions apply for purposes of this paragraph (a):

- (i) Abortion is a method of family planning when it is for the purpose of spacing births. This includes, but is not limited to, abortions performed for the physical or mental health of the mother and abortions performed for fetal abnormalities, but does not include abortions performed if the life of the mother would be endangered if the fetus were carried to term or abortions performed following rape or incest.
- (ii) “To perform abortions” means to operate a facility where abortions are provided as a method of family planning. Excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.
- (iii) “To actively promote abortion” means for an organization to commit resources, financial or other, in a substantial or continuing effort to increase the availability or use of abortion as a method of family planning.

(A) This includes, but is not limited to, the following activities:

- (I) Operating a service-delivery site that provides, as part of its regular program, counseling, including advice and information, regarding the benefits and/or availability of abortion as a method of family planning;
- (II) Providing advice that abortion as a method of family planning is an available option or encouraging women to consider abortion (passively responding to a question regarding where a safe, legal abortion may be obtained is not considered active promotion if a woman who is already pregnant specifically asks the question, she clearly states that she has already decided to have a legal abortion, and the healthcare provider reasonably believes that the ethics of the medical profession in the host country requires a response regarding where it may be obtained safely and legally);
- (III) Lobbying a foreign government to legalize or make available abortion as a method of family planning or lobbying such a government to continue the legality of abortion as a method of family planning; and

(IV) Conducting a public-information campaign in foreign countries regarding the benefits and/or availability of abortion as a method of family planning.

(B) Excluded from the definition of active promotion of abortion as a method of family planning are referrals for abortion as a result of rape or incest, or if the life of the mother would be endangered if she were to carry the fetus to term. Also excluded from this definition is the treatment of injuries or illnesses caused by legal or illegal abortions, for example, post-abortion care.

(C) Action by an individual acting in the individual's capacity shall not be attributed to an organization with which the individual is associated, provided that the individual is neither on duty nor acting on the organization's premises, and the organization neither endorses nor provides financial support for the action and takes reasonable steps to ensure that the individual does not improperly represent that he or she is acting on behalf of the organization.

(iv) Furnishing health assistance to a foreign non-governmental organization includes the transfer of funds made available under this award or goods or services financed with such funds, but does not include the purchase of goods or services from an organization or the participation of an individual in the general training programs of the recipient or sub-recipient.

(v) To "control" an organization means to possess the power to direct, or cause the direction of, the management and policies of an organization.

(7) In determining whether a foreign non-governmental organization is eligible to be a sub-recipient of health assistance under this award, the action of separate non-governmental organizations shall not be imputed to the sub-recipient, unless, in the judgment of USAID, a separate non-governmental organization is being used purposefully to avoid the provisions of this paragraph (a). Separate non-governmental organizations are those that have distinct legal existence in accordance with the laws of the countries in which they are organized. Foreign organizations that are separately organized shall not be considered separate, however, if one is controlled by the other. The recipient may request the USAID Agreement Officer's approval to treat as separate the health activities of two or more organizations, which would not be considered separate under the preceding sentence. The recipient must provide a written justification to

USAID that the health activities of the organizations are sufficiently distinct to warrant not imputing the activity of one to the other.

- (8) Health assistance may be furnished under this award by a recipient or sub-recipient to a foreign government or parastatal even though the government or parastatal includes abortion in its health program, provided that no such assistance may be furnished under this award in support of the abortion activity of the government or parastatal and any funds transferred to the government or parastatal must be placed in a segregated account to ensure that such funds may not be used to support the abortion activity of the government or parastatal.
- (9) For the avoidance of doubt, in the event of a conflict between a term of this paragraph (a) and an affirmative duty of a healthcare provider required under local law to provide counseling about and referrals for abortion as a method of family planning, compliance with such law shall not trigger a violation of this paragraph (a).

(b) This provision shall be inserted *verbatim* in subawards in accordance with the terms of paragraph (a).